

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 08/13/2018  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2017-00495771-CU-OR-VTA  
CASE TITLE: CASCONE VS. STONE

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other Real Property

EVENT TYPE: Demurrer (CLM) - to First Amended Complaint  
CAUSAL DOCUMENT/DATE FILED: Demurrer, 01/26/2018

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This case has been assigned to Judge DeNoce for all purposes. The morning calendar before Judge Kevin G. DeNoce will begin at 9 a.m. in courtroom 43. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by Court Call, please call in between 8:35 and 8:45 a.m.

If you wish to submit on the court's tentative decision, please send an email to the court at: [Courtroom43@ventura.courts.ca.gov](mailto:Courtroom43@ventura.courts.ca.gov) stating that you submit on the tentative, and copy all counsel/parties on your email. Do not call in lieu of sending an email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit: <http://www.denoce.com>

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Defendants Coldwell Banker Residential Brokerage Company's and Sheldon Berger's Demurrer to Plaintiffs Anthony and Jodie Cascone's 1st Amended Complaint.

**The court's tentative ruling is as follows:**

The court intends to sustain, without leave to amend, Defendants Coldwell Banker Residential Brokerage Company's and Sheldon Berger's demurrer to the second cause of action for breach of contract and eighth cause of action for breach of the implied covenant of good faith in Plaintiffs Anthony and Jodie Cascone's 1st Amended Complaint, on the ground that Plaintiffs fail to sufficiently allege the existence of any contract between Plaintiffs and these Defendants. In particular, the statutory disclosure form attached as Exhibit 1 to the 1st Amended Complaint is not a contract on its face. In the absence of a contract, Plaintiffs cannot maintain causes of action for breach of contract or breach of the implied covenant.

Sustain, without leave to amend, Defendants' general demurrer to the fourth cause of action for violation of Civil Code §1102 et seq., on the grounds that (a) whether this cause of action is properly viewed as a claim for violation of §1102 et seq. or a claim for violation of §2079 et seq., it appears to be governed by the 2-year limitations period set forth in Civil Code §2079.4 (see *Loken v. Century 21-Award Properties* (1995) 36 Cal.App.4th 263, 272-274); and (b) because Plaintiffs allege that they took possession of the subject Property in June 2014 (see 1st Amended Complaint, ¶28), this claim is time-barred on its face.

Sustain, with leave to amend, Defendants' demurrer to the sixth cause of action for fraudulent concealment. The new allegations in ¶74 of the 1st Amended Complaint, when combined with the general allegations in ¶¶10-13 and ¶24 which are incorporated by reference into the sixth cause of action, are sufficient to indicate the alleged misrepresentations on which this cause of action is based. However, Plaintiffs still fail to allege with factual specificity whether Defendants knew the true facts that they allegedly misrepresented (the allegation in ¶¶68 and 69 appear to be somewhat contradictory on this issue), and still fails to allege with factual specificity how Defendants knew the true facts regarding the square footage of the residence and the nature of any additions thereto.

Plaintiffs 2nd Amended Complaint to be filed and served by no later than September 4, 2018.